IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.398 OF 2004

The Commissioner of Income-tax ..Appellant.

V/s.

M/s.Hindustan Ciba Giegy Ltd. ..Respondent.

Mr.A.S.Rao for appellant.

Mr.J.D.Mistry with B.D.Damodar i/b. M/s.Kango & Co. for respondent.

CORAM : H.L.GOKHALE AND
J.P.DEVADHAR, JJ.

DATED : 12TH DECEMBER, 2005.

P.C. :-

1. Heard Mr.Rao in support of the appeal. Mr. Mistry appears for the respondent. The appeal seeks to challenge the order of the Income Tax Appellate Tribunal dismissing the appellant's appeal in respect of the assessment of year 1988-89. For the assessment year in question, the assessing officer gave credit to the TDS certificates furnished by the assessee but while granting refund declined to grant interest under section 214 on the TDS amount. On the appeal by the assessee, C.I.T. (A) granted interest under section 214 on the TDS amount. That order has been upheld by the Income Tax Appellate Tribunal. In our opinion, the

decision of the Tribunal is correct when the provision of section 214 is examined. Mr.Mistry drew our attention to the Division Bench of the Allahabad High Court in the case of **Addl. Commissioner of Income Tax V/s. Bareilly Corporation Bank Ltd.** reported in **115 I.T.R. 449** which also refers to the similar issue. The question No.2 sought to be raised, therefore, does not arise.

2. As far as the question No.1 is concerned, the decision of the Division Bench of this Court has been confirmed by the Apex Court in the case of **C.I.T. V/s. Indo Nippon Chemicals Co. Ltd.** reported in **261 I.T.R. 275** holding that MODVAT credit available to the assessee manufacturing goods with duty paid raw materials is not an income liable to be taxed. This being the position, even question No.1 sought to be raised is also covered.

3. Appeal stands dismissed.

(H.L.GOKHALE, J.)

(J.P.DEVADHAR, J.)